IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 19TH MARCH, 2007/28TH PHALGUNA, 1928

WP(C).No. 19590 of 2006(F)

PETITIONER:

THRIKKUNNAPUZHA SERVICE CO-OPERATIVE
BANK LTD.NO.855, THRIKKUNNAPUZHA P.O.,
REP. BY ITS SECRETARY, JAYASEKHARA KUMAR.

BY ADV. SRI.P.SANTHALINGAM
SRI.S.SHARAN

RESPONDENTS:

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1. KERALA STATE CO-OPERATIVE EMPLOYEES
PENSION BOARD, THIRUVANANTHAPURAM-1,
REP. BY THE ADDL. REGISTRAR.

2. C.SARASWATHY AMMA,
RETIRED SALES WOMAN, THRIKKUNNAPUZHA CO-OPERATIVE
BANK LTD. NO.855, THRIKKUNNAPUZHA P.O.,
RESIDING AT VETTINEZHATHU KANDATHIL,
PALLIPPAD MURI, THRIKKUNNAPUZHA.

ADDL.R3. JOINT REGISTRAR, CO-OPERATIVE SOCIEITIES (GENERAL),
ALAPPUZHA.

Addl.R3 is impleaded as per order dated 4.1.2007 in W.P.(C).

BY ADV. SRI.V.G.ARUN
SRI.P.N.MOHANAN
BY SR.GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

W.P(C) NO. 19590 OF 2006

Dated this the 19th day of March, 2007

J U D G M E N T

Petitioner is a Co-operative Bank, of which the second respondent was an employee who retired from service on 31.5.2002. The issue involved in this writ petition relates to pension payable to the second respondent under the Kerala Co-operative Societies Employees Self Financing Pension Scheme, 1994 (hereinafter referred to as 'the Scheme'). The second respondent was dismissed from service in 1980 consequent to disciplinary proceedings. She had challenged the same before the Labour Court. Although the Labour Court found the second respondent guilty of certain mis-conduct, the Labour Court directed the Bank to reinstate the second respondent without back wages. Accordingly, the second respondent was reinstated in service without back wages with effect from 22.8.1992. If the period from 1.9.1980 to 22.8.1992 is considered as qualifying service of the second

respondent for payment of pension, then the petitioner-Bank would be liable to pay pension contribution in respect of the second respondent taking into account that period also as service. The petitioner-Bank took a contention that, that period cannot be considered as qualifying service in view of the definition of qualifying service in the above said scheme. However, by Ext.P2, the Pension Board calculated the amounts due in respect of the second respondent payable by the petitioner- Bank as pension contribution as Rs.1,40,845/-. By Ext.P3 demand notice, the Additional Registrar directed the petitioner-Bank to pay the amount as computed in Ext.P2. The demand was reiterated by Ext.P5. The petitioner is challenging Ext.P2, P3 and P5 demand notices in this writ petition.

2. The first contention raised by the petitioner is that the period from 1.9.1980, i.e., the date of dismissal of the second respondent from service, till 22.8.1992, i.e., the date of her reinstatement, cannot be considered as qualifying service in so far as the same would amount to break in service as contemplated in Clause 19(6) of the Scheme for this purpose.

Clause 19 stipulates what is qualifying service for granting pension under the Scheme. Sub-clause (6) of Clause 19 reads thus:-

> "Any period of break in service and service prior to 18 years and beyond 58 years shall not be counted for reckoning qualifying service."

According to the counsel for the petitioner, the above said period cannot be considered as qualifying service within the meaning of Clause 19 since on account of her dismissal, there was a break in service and the Labour Court had not granted the second respondent the benefit of continuity of service while ordering reinstatement without back wages. Therefore, the petitioner would submit that the impugned orders are unsustainable.

3. The second respondent has filed a detailed counter affidavit along with which he has produced Ext.R2(b) which is an order of the Joint Registrar (General) of Co-operative Societies, Alappuzha. It states that as per a mediation settlement and a resolution of the Managing Committee of the petitioner-Bank, the Joint Registrar permitted the petitioner-Bank to compute the

period from 1.9.1980 to 22.8.1992 of the second respondent as service and to include the second respondent in the pension scheme granting the second respondent the scales of pay applicable to clerical posts from time to time. Counsel for the second respondent submits that in view of Ext.R2(b), the petitioner cannot now contend that the above said period cannot be computed as qualifying service for the purpose of granting pension to the second respondent.

4. Counsel for the petitioner would submit that Ext.R2(b) is only an executive order and cannot override Clause 19(6) of the Scheme. I do not think that there is any question of Ext.R2 (b) overriding Clause 19(6). Clause 19(6) applies only if there is a break in service. By Ext.R2(b), the period from 1.9.1980 to 22.8.1992 during which the second respondent was kept out of service has been accepted as service by the petitioner-Bank itself and therefore, the petitioner-Bank cannot contend that, that period constitutes break in service as contemplated in Clause 19 (6). Therefore, I do not find any merit in the contention of learned counsel for the petitioner in this regard.

5. Learned counsel for the petitioner raises another contention that unless and until the Joint Registrar passes an order in accordance with Ext.R2(d) judgment, the petitioner-Bank is not bound to pay any amounts towards pension contribution in respect of the second respondent. I am not enamoured by that contention for two reasons. First of all, there is no such contention in the original petition at all. He had raised such contentions only when the second respondent filed counter affidavits producing a copy of the judgment. Secondly, Ext.R2(d) judgment now directs the Joint Registrar to compute the pensionary benefits of the second respondent. The contention of the petitioner is that the Joint Registrar has not passed any orders pursuant to Ext.R2(d). Learned counsel for the petitioner also ipoints out that Ext.P3 mentioned in Ext.R2(d) judgment is Ext.R2(b) order of the Joint Registrar.

6. In answer to the above contentions, counsel for the second respondent submits that by Ext.R2(c), the Bank itself, although while the Bank was under the management of an

Administrator appointed by the Government, had computed the amounts in respect of the second respondent and the second respondent is willing to accept the same as the correct computation and therefore, the question of any fresh computation does not arise. Learned counsel for the petitioner asserts that unless and until Ext.R2(d) judgment is complied with, the petitioner -Bank is not liable to pay any amounts.

7. I am not inclined to countenance such a contention from the Bank. The Bank itself has computed the amounts which the second respondent is prepared to accept as correct. That being so, there is absolutely no reason why the petitioner-Bank should take a stand that the Bank would not pay any amount unless the Joint Registrar passed an order pursuant to Ex.R2(d). The computation envisaged by Ext.R2(d) judgment has already taken place before the judgment itself, by the Bank which was under a dispute at one time which led to Ext.R2(d) judgment. That dispute no longer survives in view of the specific contention of the second respondent that she is prepared to accept Ext.R2(c) computation by the Bank itself.

In the above circumstances, I do not find any merit in the writ petition and accordingly, the same is dismissed.

S.SIRI JAGAN,
Judge

Mbs/